

78 IDELR 203

121 LRP 8629

**Charlotte-Mecklenburg (NC) Schools
Office for Civil Rights, Southern Division,
D.C. (North Carolina)**

11-20-1295

December 4, 2020

Related Index Numbers

116.35 Implementation

10.030 Discrimination

405.030 Discrimination

Judge / Administrative Officer

Michael Hing, Team Leader

Ruling

A North Carolina district resolved allegations that its cap on services during remote instruction discriminated against students with disabilities in violation of ADA Title II and Section 504. The district's proactive efforts to resolve the Office for Civil Rights' concerns and to end the practice persuaded OCR to dismiss the complaint.

Meaning

Districts are required to tailor special education services to meet students' individualized needs. In this case, the district modified academic schedules across the board during school closures and remote learning, capping services at 30 percent of the typical school day. To avoid allegations of discrimination, the district should have made efforts to implement students' IEPs to the maximum extent possible within the modified remote learning schedule and to make adjustments to meet their individualized needs since it was still required to comply with special education laws during the pandemic.

Case Summary

A North Carolina district resolved with OCR allegations that it discriminated against students with disabilities when it modified their academic schedule during remote instruction. After schools closed due to COVID-19, the district transitioned to remote

learning and adopted a modified academic schedule of approximately 30 percent of a typical school day. The same cap was imposed on students with disabilities. The complainant contacted OCR and asserted that the district didn't allow for adjustments based on the individual needs of students with disabilities. OCR explained that ADA Title II and Section 504 prohibit discrimination on the basis of disability by public school districts and requires them to provide special education and related services designed to meet the individual needs of students with disabilities as adequately as it meets the needs of their nondisabled peers. The district confirmed its practice and that it was imposed "across the board," admittedly not allowing for adjustments based on the individual needs of each student; however, the district documented that the cap imposed on special education services was no longer in place as of the end of the SY 2019-20. OCR noted that the district took proactive steps and documented training of staff, the provision of written and oral directives reflecting that all IEPs will be reviewed, the implementation of IEPs, and that students were receiving a full day of instruction in the current school year. The district also promised to convene IEP team meetings to consider the need for compensatory education, OCR added. Finding that the district's corrective steps resolved the potential violation, OCR dismissed the complaint.

Full Text

Dear Superintendent Winston:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on June 9, 2020, against Charlotte-Mecklenburg Schools (the District). The Complainant filed the complaint on behalf of students with disabilities in the District that receive special education or related aids and services. The complaint alleged that the District discriminated against these students on the basis of disability. Specifically, the complaint alleged that the District denied a free appropriate public education (FAPE) to students with

disabilities who receive special education or related aids and services when it established a cap on special education services for all students with disabilities commensurate with the reduction in educational services to thirty (30) percent made for all students in the District, without allowing for adjustments based on the individual needs of each student.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements.

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish

procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

Summary of Facts

On March 14, 2020, the Governor of North Carolina issued an executive order closing public schools effective March 16, 2020 until March 30, 2020, "unless extended beyond that date."¹ From the date of the order through April 6, 2020, the District provided "supplemental (optional) learning materials" for all students, including students with disabilities, but did not provide any new instruction or any other educational services. On April 1, 2020, the District communicated to all District families that, on April 6, 2020, it would begin providing new, mandatory learning to all students remotely. The communication also stated that special education staff would be providing services to students with disabilities. However, the District adopted a modified academic schedule during this period of remote learning, of approximately 30 percent of a typical school day for all students, and this same cap was imposed on special education services for students with disabilities. The complaint alleged that, in implementing the 30 percent cap, the District did not allow for adjustments based on the individual needs of each student with a disability, in violation of the procedural requirements of Section 504 and Title II.

On November 30, 2020, the District confirmed during a phone call with OCR that the District's practice from April 6 through the end of the 2019-2020 school year was as alleged in the complaint, that is, the 30 percent cap was imposed across the board for all students, including students with disabilities, without allowing for adjustments based on the individual needs of each student.

However, the District also informed OCR that this practice ended at the end of the 2019-2020 school year, such that there is no longer a 30 percent cap on educational services for any students. The District provided OCR with training materials disseminated to parents of students with disabilities and special education staff, as well as written guidance for administrators, which explain that for the current school year, all students will receive a full day of instruction and special education services will be provided in accordance with students' individualized education programs (IEPs).

The District also provided documentation of written and oral directives to all District special education staff at the start of the current school year, specifying a requirement to review IEPs for all students to ensure that they are meeting the students' individual needs and to communicate with parents/guardians and/or schedule IEP meetings to discuss any changes needed. Additionally, the District's written materials also provide information to IEP teams that included instructions on the consideration of the need for compensatory education services, including clarification that compensatory education services that are required would be provided during the 2020-2021 school year or during the summer of 2021.

Analysis and Conclusion

OCR determined this case was appropriate for the Rapid Resolution Process, as outlined in OCR's Case Processing Manual (CPM) at Section 110. Accordingly, OCR reached out to the District about promptly resolving this complaint. As described above, the District provided documentation to show that the 30 percent cap imposed on special education services is no longer in place for the 2020-2021 school year; that all students are receiving a full day of instruction; and that individualized plans are being implemented in full. This same information was communicated to District parents/guardians of students with disabilities. The District also demonstrated to OCR that all special education staff in the District have been instructed to review students'

individualized plans, to reach out to parents/guardians and schedule IEP team meetings as necessary, and to consider whether there is a need for compensatory services.

OCR has determined based on this information that the District has taken the necessary steps to resolve the concern identified in the complaint. Therefore, consistent with CPM Section 110(a), OCR is dismissing this complaint pursuant to CPM Section 108(k) as of the date of this letter and will take no further action on the complaint.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

OCR appreciates the District's prompt attention to this complaint and efforts to reach a timely resolution to the concerns identified. If you have any questions, please contact Sara Clash-Drexler, the OCR attorney assigned to this complaint, at 202-453-5906 or sara.clash-drexler@ed.gov.

¹See

<https://files.nc.gov/governor/documents/files/E0117-COVID-19-Prohibiting-Mass-Gathering-and-K12-School-Closure.pdf>